

REMARKS

Claims 1-10 were pending. New claims 11-14 have been added herein. Thus, claims 1-14 are now pending. The applicant respectfully requests reconsideration and allowance of this application in view of the above amendments and the following remarks.

The applicant notes with appreciation the acknowledgement of the claim for priority under section 119 and the notice that all of the certified copies of the priority documents have been received.

The applicant acknowledges and appreciates receiving an initialed copy of the form PTO-1449 which accompanied the Information Disclosure Statement that was filed on November 24, 2003.

Claims 1-10 stand rejected under 35 USC 112, second paragraph, as being allegedly indefinite. The applicants respectfully request that this rejection be withdrawn for the following reasons.

The Examiner has asserted that the word “type” is not definite. Therefore, Applicant has amended claims 1 – 10 to address the portion of the rejection dealing with use of the word “type.”

The Examiner has asserted that the vibrator has been recited misdescriptively in claims 1 and 7. Applicant respectfully disagrees and notes that it is widely accepted that the term “includes” can be read expansively to include features or elements that may or may not be bodily incorporated. Since the standard for establishing a *prima facie* case of indefiniteness is whether evidence has been provided that one of ordinary skill in that art, when reading the claims in light of the specification, would be unable to appreciate the scope of the claims *within a reasonable degree of certainty*, the rejection with regard to claims 1 and 7 as being misdescriptive is

improper since no such evidence has been provided. However in order to expedite prosecution, the applicant has amended claim 1 to adopt the suggestion made by the Examiner and improve the clarity thereof. The amendment therefore should not be construed as an acknowledgement of the propriety of the rejection and should not narrow the scope of the claims for the purposes of, for example, determining equivalents thereof.

Likewise, the Examiner has asserted that the wording “a back-side of the in-frame fixed portion” and “located at opposite sides to the arrangement portion of the second electrode” renders claims 1 and 7 indefinite because no front side is recited and because no antecedent basis exists. Applicants first note that a lack of antecedent basis does not automatically render a claim indefinite. As noted above, the test is whether one of ordinary skill in the art when reading the claims in light of the specification would be unable to appreciate the scope of the claims within a reasonable degree of certainty. Applicant believes that the original language of a back-side and an arrangement portion would have been clear to one of ordinary skill in the art and no evidence has been provided to the contrary. However, without acknowledging the propriety of the rejection with regard to the present portion of the rejection, Applicant has amended claims 1 and 7 to recite that “a second side portion of the in-frame fixed portion located opposite to the first side on which the second driving electrode is disposed...” Reference can be made to the applicant’s specification where a corresponding embodiment is shown, for example, in Figs. 3, 6 or 9A – 9B in which the second side portion 60a of the in-frame fixed portion 60, which is opposite to a first side on which second electrode 30b is disposed, faces a side portion of the inner peripheral portion 31.

Claims 1, 2, 4, 5, and 7-10 stand rejected under 35 USC 102(b) as being allegedly anticipated by Lee et al., U.S. Patent No. 5,780,740 (hereinafter “Lee”). The applicants respectfully request that this rejection be withdrawn for the following reasons.

Claim 1 is amended herein to recite a novel embodiment disclosed, for example, on pages 17 – 18 of applicant's specification in which the second driving electrode (40b, 41b) is electrically connected to the first driving electrode to cooperatively apply the electrostatic force to the vibrator in a same direction as the first driving electrode. As mentioned on, for example, page 19, lines 6 – 9, the second electrode promotes higher area efficiency.

The Examiner has asserted that Lee discloses a vibrator 100 having first and second driving electrodes 107, 110. Applicant notes that Lee, at best, describes a device in which an electrostatic force is generated at fingers 110 of the drivers 109, leading to the vibration of fingers 106, 107 when current flows through the drivers. However, fingers 106, 107 do not cooperatively apply an electrostatic force to the vibrator in a same direction as recited in claim 1, as amended. Therefore, Lee fails to disclose all the claimed features as required. It is respectfully requested therefore that the rejection of claim 1 be reconsidered and withdrawn.

Claim 7 is amended to recite a novel embodiment disclosed, for example, on page 19 of applicant's specification in which an electrostatic force to be generated in the capacitor is smaller than the electrostatic force for driving the vibrator. More particularly, as stated on the second paragraph of page 19, the unevenly-shaped portions formed in the gap 80 result in reduced electrostatic force acting in the gap 70.

Lee fails to disclose that an electrostatic force to be generated in the capacitor is smaller than the electrostatic force for driving the vibrator. Therefore, since Lee fails to disclose all the claimed features as required, it is respectfully requested that the rejection of claim 7 be reconsidered and withdrawn.

Claims 2, 4, 5 and 8-10, by virtue of depending from claims 1 and 7, are allowable for at least the reasons set forth herein above. It is respectfully requested that the rejection of claims 2, 4, 5 and 8-10 be reconsidered and withdrawn.

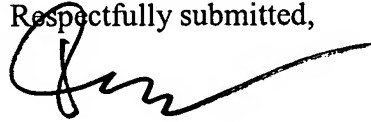
The indication of allowability with regard to claims 3 and 6 is noted with appreciation. Claim 3 has been partially amended to include the features of claim 1, and, for the reasons set forth herein above with regard to claim 1, is believed allowable. Claim 6, by virtue of depending from claim 1, is believed allowable for at least the reasons set forth hereinabove with regard to claim 1.

New claims 11-14 are presented for examination and contain features such as those submitted in connection with claims 1 and 7 using slightly different language. For example, claim 11 recites that a first movable electrode and a second movable electrode are equipotentially displaced from the first movable electrode. Favorable consideration is respectfully requested.

In view of the foregoing, the applicant respectfully submits that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

Please charge any unforeseen fees that may be due to Deposit Account No. 50-1147.

Respectfully submitted,



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